



SUPREME COURT OF APPEALS

BUILDING I, ROOM E-302
1900 KANAWHA BOULEVARD, EAST
CHARLESTON, WEST VIRGINIA 25305
(304) 558-2602
(304) 558-5491 FAX
brent.benjamin@courtswv.gov

BRENT D. BENJAMIN
CHIEF JUSTICE

STATEMENT OF CHIEF JUSTICE BRENT D. BENJAMIN

June 8, 2009

As an appellate judge, I have the highest respect not only for the judicial process, but also for the Justices on the United States Supreme Court. It is obvious from the argument in March, the 5-4 vote of the Court, and the diversity of opinions from the Supreme Court, that the issue in the *Caperton* case was not an easy one. I thank the Justices for their consideration.

I am pleased that the Supreme Court has not questioned my ethics, my integrity, or my personal impartiality or propriety. As a personal matter, that is very important to me and I appreciate the fact that the Justices made a specific point of clarifying that issue.

In focusing on the issue of due process, the Supreme Court's majority opinion recognizes that there is no "white line" to guide judges like me in resolving the issue of an elected judge's duty to remain on a case versus the need to remove oneself due to external factors. The Supreme Court's new standard appears to focus on the perceptions created regarding the impact on due process in a given case caused by the activities of persons other than the judge in question. Specifically, the Supreme Court focuses on whether there may be a risk to due process in a case when an external party's influence in a given situation, such as in an election, is sufficiently substantial that it must be presumed to engender the potential for actual bias by a judge despite there being no direct relationship between the judge and the external party, and despite the lack of any benefit to the judge.

This is a very fact-specific new standard. The focus of "potential for bias" now places more due process emphasis on perceptions and independent actions of external parties than on a judge's actual conduct or record. For example, my four-year record of voting 81 percent of the time against Massey's interests would now be only a part of the factors to be balanced in a recusal consideration.

I am confident that there will be a lot of posturing and politicizing about this decision from all sides, as there has been with so many aspects of this case. Such a response would be counter to the philosophy of removing politics from the court, which all fair-minded people share. I would hope instead that the decision be given a fair and sober reading, and that it be respected as all decisions of the United States Supreme Court should be.

Brent D. Benjamin
Chief Justice
Supreme Court of Appeals of West Virginia

This release is personal and is not a release of the Supreme Court of Appeals of West Virginia.